

AMENDED IN SENATE MARCH 29, 2011

**SENATE BILL**

**No. 454**

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**Introduced by Senator Pavley**

February 16, 2011

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~~An act to amend Sections 17203, 17204, and 17206 of, and to add~~  
*An act to add Section 7110.05 to, the Business and Professions Code,*  
*to amend Section 25900 of, and to add Section 25402.11 to, the Public*  
*Resources Code, and to amend Section 399.4 of the Public Utilities*  
*Code, relating to the Energy Commission energy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Pavley. Energy efficiency standards: ~~Energy Commission enforcement.~~

~~Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law prohibits certain actions by licensed contractors and subjects a licensee to discipline for a violation thereof. Existing law authorizes the board to issue a citation for a violation of the Contractors' State License Law and to issue civil penalties. Existing law provides for an Energy Resources Conservation and Development Commission (Energy Commission) within state government.~~

~~This bill would subject a licensee to discipline for the failure to comply with specified energy efficiency standards under the California Code of Regulations. The bill would require the board to submit an annual report to the Legislature with regard to any civil penalties assessed against a licensee or unlicensed person for a violation of those standards. The bill would require the Energy Commission to collaborate with the board to identify and investigate the failure of licensees and unlicensed contractors to comply with those standards.~~

~~Existing law defines an act of unfair competition as including an unlawful, unfair, or fraudulent business act or practice, an unfair, deceptive, untrue, or misleading advertisement, and other specified conduct relating to representations made to the public. Existing law authorizes the Attorney General, certain local prosecutors, a private plaintiff with an injury in fact, or a plaintiff representative who meets certain standing requirements to bring an action against any person who engages, has engaged, or proposes to engage in unfair competition; provides for injunctive relief, and authorizes the court to make any order or judgment that is necessary to restore to any person in interest any money or property that may have been acquired by means of the unfair competition. Civil penalties may also be collected by the Attorney General and the local prosecutors, as specified. A portion of the civil penalties collected by the Attorney General are deposited into the Unfair Competition Law Fund, and, upon appropriation by the Legislature, are used to support investigations and prosecutions of consumer protection laws.~~

~~The bill would authorize the Energy Commission to bring an action under the unfair competition laws to enforce any statute or regulation that the commission is directed to adopt, implement, administer, or enforce. The bill would authorize the Energy Commission to collect civil penalties for a violation thereof and, upon appropriation by the Legislature, would authorize the expenditure of those moneys by the commission for purposes of enforcement.~~

*(1) Existing law establishes the State Energy Resources Conservation and Development Commission and vests with the commission jurisdiction over specified matters related to energy. Existing law requires the Attorney General, upon the request of the commission, to petition a court of competent jurisdiction to enjoin violations of law that is within the subject matter of the commission. Existing law requires the commission to prescribe, by regulation, building design and construction standards, energy and water efficiency design standards for new residential and nonresidential buildings, and appliance efficiency standards.*

*This bill would authorize the commission to petition a court of competent jurisdiction to enjoin a violation of the above standards. The bill would authorize the commission to establish an administrative enforcement process to enforce the above standards. The bill would provide for the assessment of civil penalties by the courts or*

*administrative civil penalties by the commission for a violation of the above standards.*

*This bill would require the commission and the Contractors' State License Board to collaborate to identify and investigate the failure of licensed and unlicensed contractors to comply with the above standards and to obtain the necessary building permits, and to conduct an education and awareness campaign for contractors and consumers regarding the permitting requirements.*

**Existing**

(2) *Existing* law provides that it is the policy of this state and the intent of the Legislature that the commission administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority. Existing law provides for the regulation of public utilities under the Public Utilities Act. A violation of the Public Utilities Act is a crime.

This bill would prohibit a public utility from issuing rebates or incentives for energy efficiency improvements without the requisite building permits. Because a violation of this provision would be a crime under the Public Utilities Act, the bill would impose a state-mandated local program.

**The**

(3) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation that maximizes the energy saved by the state's various
- 3 energy efficiency statutes, regulations, and programs.
- 4 SEC. 2. The Legislature finds and declares all of the following:
- 5 (a) California's building and appliance energy efficiency
- 6 standards, specified in Part 6 of Title 24 of, and Article 4 of
- 7 Chapter 4 of Division 2 of Title 20 of, the California Code of
- 8 Regulations, respectively, represent a state resource for
- 9 accomplishing increased energy efficiency in newly constructed

1 buildings, additions, and alterations to existing buildings, and in  
2 appliances. These standards are recognized as leading the nation  
3 in energy savings and serving as one of the primary energy policy  
4 tools that has resulted in California's per capita energy use staying  
5 essentially constant over the past 30 years while that of the rest of  
6 the United States increased steadily *by nearly 50 percent*.

7 (b) The effectiveness of the building energy efficiency standards  
8 is dependent on the conscientious efforts of licensed contractors  
9 in California to build buildings and install components and  
10 equipment in compliance with the standards.

11 (c) The Governor and the Legislature recognize that many  
12 buildings are being retrofitted *by unlicensed contractors and*  
13 *without required permits. Contractors operating in the underground*  
14 *economy are in flagrant violation of California contracting law.*  
15 ~~In particular, these are contractors operating without a license, and~~  
16 ~~those, whether licensed or not, that willfully and deliberately fail~~  
17 ~~to obtain a building permit and willfully and deliberately fail to~~  
18 ~~comply with the building laws and other laws of the state.~~  
19 Unlicensed and licensed contractors who market their services  
20 with these underground practices engage in unfair competition,  
21 undercutting legitimate contractors who endeavor to  
22 conscientiously comply with contracting, building, and business  
23 laws. This underground activity denies state and local governments  
24 license and building permit revenue, diminishing the ability of  
25 state and local agencies to provide enforcement services intended  
26 to protect consumers by ensuring compliance with these laws.  
27 These practices particularly damage and diminish the potential for  
28 conscientious compliance with the building energy efficiency  
29 standards.

30 (d) The mission of the Contractors' State License Board is to  
31 protect consumers by regulating contractors to promote the health,  
32 safety, and general welfare of the public in matters related to  
33 construction. As a part of fulfilling this mission, it is important for  
34 the board's licensing program to include efforts to eradicate the  
35 underground practice of performing construction work without  
36 building permits and failing to comply with the building energy  
37 efficiency standards. ~~It has become critically important for the~~  
38 ~~board to send a strong, definitive message to those whose objective~~  
39 ~~is illegal financial gain at the expense of safe building practices~~  
40 ~~and energy efficiency. In particular, the board should not tolerate~~

1 ~~illegal practices related to building energy efficiency standards.~~  
2 ~~efficiency standards.~~

3 (e) *The State Energy Resources Conservation and Development*  
4 *Commission is responsible for establishing energy efficiency*  
5 *building codes and appliance standards in California. As such,*  
6 *that commission has expertise in how to raise awareness and*  
7 *enforce these standards. It has become critically important for*  
8 *that commission and the Contractors' State License Board to*  
9 *ensure that all buildings and appliances meet California's*  
10 *efficiency standards and send a strong, definitive message to those*  
11 *whose objective is illegal financial gain at the expense of safe*  
12 *building practices and energy efficiency.*

13 (e)

14 (f) The appliance efficiency standards deliver cost-effective  
15 energy savings to consumers. They are an important component  
16 of the state's programs to manage its energy consumption, conserve  
17 natural resources, and improve the quality of life for all its citizens.  
18 The Governor and Legislature recognize that significant quantities  
19 of appliances are sold and offered for sale in California that do not  
20 meet the state's energy efficiency standards. The products  
21 needlessly consume resources and saddle consumers with hidden  
22 long-term costs after the initial purchase. *Furthermore, inadequate*  
23 *certification of appliances sold in California undermines the state's*  
24 *ability to ensure that products sold in California meet the state's*  
25 *efficiency standards.*

26 (f)

27 (g) These violations result in a substantial financial loss to  
28 consumers who purchase energy efficiency goods and services,  
29 and represent unfair competition that dramatically impacts the  
30 economic viability of legitimate businesses. It is critical for  
31 California to maintain a business climate favorable to legitimate  
32 competition, so that conscientious contractors, manufacturers,  
33 distributors, retailers, Home Energy Rating System raters, and  
34 other businesses are able to sustain their businesses against unfair  
35 competition.

36 SEC. 3. Section 7110.05 is added to the Business and  
37 Professions Code, to read:

38 ~~7110.05.—(a) The failure of a licensee to comply with the~~  
39 ~~building energy efficiency standards specified in Part 6 of Title~~

1 ~~24 of the California Code of Regulations constitutes a cause for~~  
2 ~~disciplinary action.~~

3 ~~(b) (1) Beginning with the fiscal year commencing on July 1,~~  
4 ~~2011, and each fiscal year thereafter, the board shall compile the~~  
5 ~~essential data necessary to create a report identifying the number~~  
6 ~~of civil penalties that the board assessed during the previous fiscal~~  
7 ~~year against licensees and unlicensed contractors for failure to~~  
8 ~~comply with the standards described in subdivision (a) of this~~  
9 ~~section and subdivision (b) of Section 7028.7. This report shall be~~  
10 ~~submitted to the Legislature no later than the first business day in~~  
11 ~~October of each year.~~

12 ~~(2) The report to be submitted pursuant to this subdivision shall~~  
13 ~~be submitted in compliance with Section 9795 of the Government~~  
14 ~~Code.~~

15 ~~(e) The State Energy Resources Conservation and Development~~  
16 ~~Commission shall collaborate with the board to identify and~~

17 *7110.05. The State Energy Resources Conservation and*  
18 *Development Commission and the board shall collaborate to*  
19 *identify and* investigate the failure of licensees and unlicensed  
20 contractors to comply with the building energy efficiency standards  
21 and to obtain building permits, and conduct an education and  
22 awareness campaign to increase knowledge of permitting  
23 requirements among contractors and consumers.

24 ~~SEC. 4. Section 17203 of the Business and Professions Code~~  
25 ~~is amended to read:~~

26 ~~17203. Injunctive Relief—Court Orders~~

27 ~~Any person who engages, has engaged, or proposes to engage~~  
28 ~~in unfair competition may be enjoined in any court of competent~~  
29 ~~jurisdiction. The court may make such orders or judgments,~~  
30 ~~including the appointment of a receiver, as may be necessary to~~  
31 ~~prevent the use or employment by any person of any practice which~~  
32 ~~constitutes unfair competition, as defined in this chapter, or as may~~  
33 ~~be necessary to restore to any person in interest any money or~~  
34 ~~property, real or personal, which may have been acquired by means~~  
35 ~~of such unfair competition. Any person may pursue representative~~  
36 ~~claims or relief on behalf of others only if the claimant meets the~~  
37 ~~standing requirements of Section 17204 and complies with Section~~  
38 ~~382 of the Code of Civil Procedure, but these limitations do not~~  
39 ~~apply to claims brought under this chapter by the Attorney General,~~  
40 ~~by any district attorney, county counsel, city attorney, or city~~

1 prosecutor in this state, or by the Energy Resources Conservation  
2 and Development Commission to enforce any statute or regulation  
3 that the commission is directed to adopt, implement, administer,  
4 or enforce.

5 SEC. 5. Section 17204 of the Business and Professions Code  
6 is amended to read:

7 17204. Actions for Injunctions by Attorney General, District  
8 Attorney, County Counsel, City Attorneys, or the Energy Resources  
9 Conservation and Development Commission

10 Actions for relief pursuant to this chapter shall be prosecuted  
11 exclusively in a court of competent jurisdiction by the Attorney  
12 General or a district attorney or by a county counsel authorized  
13 by agreement with the district attorney in actions involving  
14 violation of a county ordinance, or by a city attorney of a city  
15 having a population in excess of 750,000, or by a city attorney in  
16 a city and county or, with the consent of the district attorney, by  
17 a city prosecutor in a city having a full-time city prosecutor in the  
18 name of the people of the State of California upon their own  
19 complaint or upon the complaint of a board, officer, person,  
20 corporation, or association, or by the Energy Resources  
21 Conservation and Development Commission, or by a person who  
22 has suffered injury in fact and has lost money or property as a  
23 result of the unfair competition.

24 SEC. 6. Section 17206 of the Business and Professions Code  
25 is amended to read:

26 17206. Civil Penalty for Violation of Chapter

27 (a) Any person who engages, has engaged, or proposes to engage  
28 in unfair competition shall be liable for a civil penalty not to exceed  
29 two thousand five hundred dollars (\$2,500) for each violation,  
30 which shall be assessed and recovered in a civil action brought in  
31 the name of the people of the State of California by the Attorney  
32 General, by any district attorney, by any county counsel authorized  
33 by agreement with the district attorney in actions involving  
34 violation of a county ordinance, by any city attorney of a city  
35 having a population in excess of 750,000, by any city attorney of  
36 any city and county, or, with the consent of the district attorney,  
37 by a city prosecutor in any city having a full-time city prosecutor,  
38 or by the Energy Resources Conservation and Development  
39 Commission to enforce any statute or regulation that the

1 commission is directed to adopt, implement, administer, or enforce,  
2 in any court of competent jurisdiction.

3 (b) ~~The court shall impose a civil penalty for each violation of~~  
4 ~~this chapter. In assessing the amount of the civil penalty, the court~~  
5 ~~shall consider any one or more of the relevant circumstances~~  
6 ~~presented by any of the parties to the case, including, but not~~  
7 ~~limited to, the following: the nature and seriousness of the~~  
8 ~~misconduct, the number of violations, the persistence of the~~  
9 ~~misconduct, the length of time over which the misconduct occurred,~~  
10 ~~the willfulness of the defendant's misconduct, and the defendant's~~  
11 ~~assets, liabilities, and net worth.~~

12 (e) ~~If the action is brought by the Attorney General, one-half of~~  
13 ~~the penalty collected shall be paid to the treasurer of the county in~~  
14 ~~which the judgment was entered, and one-half to the General Fund.~~  
15 ~~If the action is brought by a district attorney or county counsel,~~  
16 ~~the penalty collected shall be paid to the treasurer of the county in~~  
17 ~~which the judgment was entered. Except as provided in subdivision~~  
18 ~~(e), if the action is brought by a city attorney or city prosecutor,~~  
19 ~~one-half of the penalty collected shall be paid to the treasurer of~~  
20 ~~the city in which the judgment was entered, and one-half to the~~  
21 ~~treasurer of the county in which the judgment was entered. The~~  
22 ~~forementioned funds shall be for the exclusive use by the Attorney~~  
23 ~~General, the district attorney, the county counsel, and the city~~  
24 ~~attorney for the enforcement of consumer protection laws. If the~~  
25 ~~action is brought by the Energy Resources Conservation and~~  
26 ~~Development Commission, the penalties collected under this~~  
27 ~~section, upon appropriation to the commission by the Legislature,~~  
28 ~~shall be used by the commission to enforce any statute or regulation~~  
29 ~~that the commission is directed to adopt, implement, administer,~~  
30 ~~or enforce.~~

31 (d) ~~The Unfair Competition Law Fund is hereby created as a~~  
32 ~~special account within the General Fund in the State Treasury. The~~  
33 ~~portion of penalties that is payable to the General Fund or to the~~  
34 ~~Treasurer recovered by the Attorney General from an action or~~  
35 ~~settlement of a claim made by the Attorney General pursuant to~~  
36 ~~this chapter or Chapter 1 (commencing with Section 17500) of~~  
37 ~~Part 3 shall be deposited into this fund. Moneys in this fund, upon~~  
38 ~~appropriation by the Legislature, shall be used by the Attorney~~  
39 ~~General to support investigations and prosecutions of California's~~  
40 ~~consumer protection laws, including implementation of judgments~~

1 obtained from such prosecutions or investigations and other  
2 activities which are in furtherance of this chapter or Chapter 1  
3 (commencing with Section 17500) of Part 3.

4 (e) If the action is brought at the request of a board within the  
5 Department of Consumer Affairs or a local consumer affairs  
6 agency, the court shall determine the reasonable expenses incurred  
7 by the board or local agency in the investigation and prosecution  
8 of the action.

9 Before any penalty collected is paid out pursuant to subdivision  
10 (e), the amount of any reasonable expenses incurred by the board  
11 shall be paid to the Treasurer for deposit in the special fund of the  
12 board described in Section 205. If the board has no such special  
13 fund, the moneys shall be paid to the Treasurer. The amount of  
14 any reasonable expenses incurred by a local consumer affairs  
15 agency shall be paid to the general fund of the municipality or  
16 county that funds the local agency.

17 (f) If the action is brought by a city attorney of a city and county,  
18 the entire amount of the penalty collected shall be paid to the  
19 treasurer of the city and county in which the judgment was entered  
20 for the exclusive use by the city attorney for the enforcement of  
21 consumer protection laws. However, if the action is brought by a  
22 city attorney of a city and county for the purposes of civil  
23 enforcement pursuant to Section 17980 of the Health and Safety  
24 Code or Article 3 (commencing with Section 11570) of Chapter  
25 10 of Division 10 of the Health and Safety Code, either the penalty  
26 collected shall be paid entirely to the treasurer of the city and  
27 county in which the judgment was entered or, upon the request of  
28 the city attorney, the court may order that up to one-half of the  
29 penalty, under court supervision and approval, be paid for the  
30 purpose of restoring, maintaining, or enhancing the premises that  
31 were the subject of the action, and that the balance of the penalty  
32 be paid to the treasurer of the city and county.

33 *SEC. 4. Section 25402.11 is added to the Public Resources*  
34 *Code, to read:*

35 25402.11. (a) *If the commission finds that a violation of the*  
36 *regulations adopted pursuant to subdivision (a) or (b) of Section*  
37 *25402 and approved by the State Building Standards Commission*  
38 *pursuant to Section 25402.2, or a violation of the regulations*  
39 *adopted pursuant to subdivision (c) of Section 25402, has occurred*  
40 *or is threatening to occur, the commission may, or the Attorney*

1 *General upon the request of the commission shall, petition a court*  
2 *to enjoin the violation. The court may grant prohibitory or*  
3 *mandatory injunctive relief as warranted by way of temporary*  
4 *restraining order, preliminary injunction, and permanent*  
5 *injunction, and may assess a civil penalty pursuant to subdivision*  
6 *(b).*

7 *(b) (1) A person who violates a regulation adopted pursuant*  
8 *to subdivision (a) or (b) of Section 25402 and approved by the*  
9 *State Building Standards Commission pursuant to Section 25402.2,*  
10 *or violates the regulations adopted pursuant to subdivision (c) of*  
11 *Section 25402, shall be liable for a civil penalty not to exceed two*  
12 *thousand five hundred dollars (\$2,500) for each violation.*

13 *(2) For the purposes of this section, a person who performs*  
14 *work that is subject to the regulations adopted pursuant to*  
15 *subdivision (a) or (b) of Section 25402 and who is an unlicensed*  
16 *contractor or who fails to obtain the required permit is deemed to*  
17 *be in violation.*

18 *(c) For a person found to be in violation pursuant to subdivision*  
19 *(b), the court shall impose a civil penalty pursuant to subdivision*  
20 *(b). In assessing the amount of the civil penalty, the court shall*  
21 *consider all of the following factors:*

22 *(1) The nature and seriousness of the misconduct.*

23 *(2) The number of violations.*

24 *(3) The persistence of the misconduct.*

25 *(4) The length of time over which the misconduct occurred.*

26 *(5) The willfulness of the defendant's misconduct.*

27 *(6) The defendant's assets, liabilities, and net worth.*

28 *(d) (1) Civil penalties collected pursuant to this section in a*  
29 *civil action brought by the Attorney General shall be deposited*  
30 *into the General Fund.*

31 *(2) Civil penalties collected pursuant to this section in a civil*  
32 *action brought by the commission shall be deposited into the*  
33 *Energy Resources Program Account and, upon appropriation by*  
34 *the Legislature, shall be expended by the commission for the*  
35 *education of the public on building and appliance energy efficiency*  
36 *and for the enforcement of regulations adopted pursuant to Section*  
37 *25402.*

38 *(3) In a civil action brought by the commission pursuant to this*  
39 *section, upon the granting of relief, the court shall award to the*

1 *commission the reasonable costs incurred by the commission in*  
2 *investigating and prosecuting the action.*

3 *(e) The commission may adopt regulations establishing an*  
4 *administrative enforcement process for a violation of a regulation*  
5 *adopted pursuant to subdivision (a) or (b) of Section 25402 and*  
6 *approved by the State Building Standards Commission pursuant*  
7 *to Section 25402.2 or a regulation adopted pursuant to subdivision*  
8 *(c) of Section 25402. The enforcement process shall be a public*  
9 *process under which the commission may issue a notice of violation*  
10 *and correction, and for the assessment of administrative civil*  
11 *penalties up to the amounts specified in subdivision (b) considering*  
12 *the factors specified in subdivision (c).*

13 *(f) An order imposing an administrative civil penalty shall be*  
14 *subject to judicial review pursuant to subdivisions (a) and (b) of*  
15 *Section 25534.2.*

16 *(g) A person shall not be liable for a civil penalty pursuant to*  
17 *subdivision (b) if that person is subject to an administrative civil*  
18 *penalty pursuant to subdivision (e).*

19 *SEC. 5. Section 25900 of the Public Resources Code is*  
20 *amended to read:*

21 *25900. Except as provided in ~~Section~~ Sections 25402.11 and*  
22 *25531, whenever if the commission finds that any provision of*  
23 *this division is violated or a violation is threatening to take place*  
24 *which that constitutes an emergency requiring immediate action*  
25 *to protect the public health, welfare, or safety, the Attorney*  
26 *General, upon request of the commission, shall petition a court to*  
27 *enjoin such the violation. The court ~~shall have jurisdiction to~~ may*  
28 *grant such prohibitory or mandatory injunctive relief as may be*  
29 *warranted by way of temporary restraining order, preliminary*  
30 *injunction, and permanent injunction.*

31 ~~SEC. 7.~~

32 *SEC. 6. Section 399.4 of the Public Utilities Code is amended*  
33 *to read:*

34 *399.4. (a) (1) In order to ensure that prudent investments in*  
35 *energy efficiency continue to be made that produce cost-effective*  
36 *energy savings, reduce customer demand, and contribute to the*  
37 *safe and reliable operation of the electric distribution grid, it is the*  
38 *policy of this state and the intent of the Legislature that the*  
39 *commission shall continue to administer cost-effective energy*

1 efficiency programs authorized pursuant to existing statutory  
2 authority.

3 (2) As used in this section, the term “energy efficiency” includes,  
4 but is not limited to, cost-effective activities to achieve peak load  
5 reduction that improve end-use efficiency, lower customers’ bills,  
6 and reduce system needs.

7 (b) Any rebates or incentives provided by any public utility for  
8 energy efficiency improvements and installation of energy efficient  
9 components, equipment, or appliances in buildings shall be  
10 provided only if required building permits are obtained.

11 (c) The commission, in evaluating energy efficiency investments  
12 under its existing statutory authority, shall also ensure that local  
13 and regional interests, multifamily dwellings, and energy service  
14 industry capabilities are incorporated into program portfolio design  
15 and that local governments, community-based organizations, and  
16 energy efficiency service providers are encouraged to participate  
17 in program implementation where appropriate.

18 ~~SEC. 8.~~

19 *SEC. 7.* No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.